No. 83-6

In The

Supreme Court of the United States

October Term, 1983

CARROLL D. BESADNY, ET AL.,
Appellants,

v.

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, ET AL.,
Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Were the usufructuary rights reserved by the Lake Superior Chippewa in their treaties with the United States of 1837 and 1842 abrogated by the 1850 order of President Zachary Taylor directing that the Chippewa remove from their ceded lands?

2. Were the usufructuary rights reserved by the Lake Superior Chippewa in their 1837 and 1842 treaties with the United States released or extinguished by the Treaty of 1854?

PARTIES

Supplementing the parties named by the appellants in their Jurisdictional Statement, appellees, in addition to the named party, are Frederick Tribble and Michael Tribble, who appear in the case individually and as class representatives of all members of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians who are unable to exercise claimed off-reservation usufructuary treaty rights due to prospective prosecution by appellants or their successors in office for alleged violations of State law.

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Appellees Lac Courte Oreilles Band of Lake Superior Chippewa Indians, et al., respectfully move to dismiss or affirm the judgment of the United States Court of Appeals for the Seventh Circuit in this case, pursuant to Rule 16.1 (a) and (d), Rules of the United States Supreme Court.

STATEMENT OF THE CASE

This action was commenced in the United States District Court for the Western District of Wisconsin in 1974 by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, a

federally recognized Indian Tribe, (hereinafter referred to as the Tribe) and two of its members, Frederick and Michael Tribble. Declaratory and injunctive relief was sought against the defendants, who are State and local officials whose duties include the enforcement of Wisconsin's fish and game laws. The suit was based upon the Tribe's right to hunt, fish, and gather, without regulation by the State of Wisconsin, on the lands ceded to the United States by the Lake Superior Chippewa, which was reserved by the Indians in the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591. Federal court jurisdiction was invoked under 28 U.S.C. §§ 1331(a), 1343(3), 1362, and 2201. Cross-motions for summary judgment were filed by the parties in 1975, which were not ruled upon by the Honorable Judge James E. Doyle until 1978, when he issued an opinion which combined three cases then pending in his court. The decision is reported as *United States v. Bouchard*,, 464 F.Supp. 1316 (W.D. Wis. 1978). Summary judgment was granted to the State and local officials and the complaint was dismissed. This decision was based on the trial court's construction of the effect of a later treaty with the Lake Superior Chippewa, the Treaty of September 30, 1854, 10 St. 1109. Through that treaty, the Lake Superior Chippewa obtained permanent reservations within the area ceded by the 1837 and 1842 treaties; the trial court interpreted this agreement to have thereby resulted in relinquishment by the Chippewa of the usufructuary rights that they had reserved throughout the lands ceded in earlier treaties. *United States v. Bouchard*, 464 F. Supp. at 1352; App. 126a.

The Tribe appealed this decision to the Court of Appeals for the Seventh Circuit in 1978 (No. 78-2398); the State and local officials cross-appealed (No. 78-2443) the district court's separate holding that the order issued by President Zachary Taylor in 1850, requiring that the Chippewa remove from their ceded lands, was invalid and therefore did not terminate the usufructuary rights secured by the earlier treaties. *Bouchard*, 464 F. Supp. at 1350; App. 121a. The State of Wisconsin appealed this holding as rendered in *United States v. Wisconsin*, (No. 79-1014), reported in *United States v. Bouchard, supra*, as *United States v. Ben*

With the consent of all parties, the court of appeals ordered that briefing be suspended until resolution by the district court of another case then pending before it in which many of the documents of record would be utilized. Upon the issuance of the district court's decision in *United States v. Baker*, 524 F. Supp. 726 (W.D. Wis. 1981), the record was transmitted to the court of appeals and briefing was held in the pending appeals. The appeals were consolidated for purposes of oral argument and the January 25, 1983, decision of the court of appeals combines them.

The circuit court reversed the trial court's holding that the 1854 treaty effected a relinquishment of the usufructuary rights secured to the Chippewa by earlier treaties, and reversed that court's summary judgment in favor of the State and local officials. *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341, 365 (7th Cir. 1983); App. 51a-52a. The case was remanded to the district court with instructions to enter judgment for the Tribe on this issue. *Id.* Further proceedings were also ordered, for "consideration as to the permissible scope of State regulation over the LCO's exercise of their usufructuary rights." 700 F.2d 341, 365; App. 52a. The court of appeals also affirmed the trial court's holding that the removal order was invalid. 700 F.2d 341, 362; App. 44a.

Incorporated in this statement of the case is the concise recitation of all the facts material to consideration of the questions presented which is contained in the opinion of the court below. 700 F.2d at 344-349; App. 3a-15a.

MOTION TO DISMISS

Appellees hereby move to dismiss the appeal on the ground that jurisdiction in this Court is wanting due to the absence of a declaration by the court of appeals that a State statute is invalid as repugnant to the Constitution, treaties or laws of the United States. 28 U.S.C. § 1254 (2). *See; Cross v. Bruning*, 385 U.S. 14 (1966), *reh. denied*, 385 U.S. 964 (1966); *Williams v. La Vallee*, 362 U.S. 637 (1960), *reh. denied*, 363 U.S. 832 (1960).

No law of the State of Wisconsin was determined to be invalid by the court of appeals in this case; that court did not even cite a Wisconsin statute or regulation in its opinion. Nor was such a determination arguably necessary for the court of appeals to resolve the issues presented to it by the parties in their cross-appeals. Those issues were: (1) the nature of the usufructuary rights retained by the Chippewa under the treaties of 1837 and 1842; (2) the existence of any subsequent act of the United States or the Chippewa which modified or extinguished the usufructuary rights. *Lac Courte Oreilles Band v. Voigt*, 700 F.2d 341, 343-344; App. 3a. The issue of state regulatory authority over the exercise of treaty-guaranteed usufructuary rights was expressly remanded to the district court for further proceedings, with no explication of the manner in which the issue was to be resolved in the trial court.

To base this appeal on the supposed determination that Wis. Stat §29.09(1) is inapplicable to the off-reservation usufructuary activities of the Tribe's members is therefore an incomprehensible error. It should be noted that appellants do not cite any language in the court of appeals' opinion which holds that statute to be invalid; instead appellants cite portions of the Tribe's amended complaint which allege the statute to be invalid as applied to off-reservation hunting, fishing, and gathering activities of its members. No authority exists for the unique interpretation of 28 U.S.C. § 1254(2), that allegations in a complaint of a statute's invalidity are sufficient to constitute a holding of a Court of Appeals when it enters judgment in favor of the party challenging it application.

Another barrier to consideration of this appeal is that the decision below is not final. As is obvious from the nature of the court of appeals disposition of this case and its directions to the district court, further proceedings will be necessary in order to determine which, if any, Wisconsin hunting and fishing laws and regulations cannot be applied to off-reservation treaty hunting and fishing by the Tribe's members. Prior to such a determination, there exists no final holding concerning the invalidity of any Wisconsin fish and game

statute including Wis. Stat. §29.09(1). *Doran v. Salem Inn, Inc.*, 472 U.S. 92 (1975); *El Paso v. Simmons*, 379 U.S. 497 (1965). An appeal based on the expectation that this statute will be held inapplicable to Tribal members in later proceedings is therefore premature.1

In the absence of a holding of invalidity of the proffered statute by the court of appeals, the appeal necessarily becomes a request of this Court to render an advisory opinion concerning the application of the statute to an undetermined set of circumstances. This Court has never construed its appellate jurisdiction to allow it to render advisory opinions. *See, e.g., Ashbury Hospital v. Cass County*, 326 U.S. 207, 213-214 (1945).

MOTION TO AFFIRM

Alternatively, appellees Lac Courte Oreilles Band of Lake Superior Chippewa Indians, et al., move to affirm the judgment of the Court of Appeals for the Seventh Circuit that the right to hunt, fish, and gather reserved by the Chippewa on the lands ceded to the United States in the 1837 and 1842 treaties have not been extinguished, abrogated or relinquished. It is manifest that the questions presented by appellants are so insubstantial as to make further arguments unnecessary.

A. The Court Of Appeals Properly Applied The Canons Of Treaty Construction To The Treaties At Issue.

1.) Appellants recognize the existence of the finality requirement as a potential barrier to this appeal, but apparently fail to recognize that the cases cited in support of their claim that this case if final (App. 2) are inapposite; all three cases were decided on a writ of certiorari to the court of appeals.

This Court has formulated several related rules of construction in interpreting treaties between the United States and Indian Tribes. These rules have become the standard introductory discussion in cases involving an Indian treaty, and the court of appeals likewise began with a recitation of the canons of construction. 700 F.2d at 350; App. 17a-18a. The first rule is that Indian treaties are to be construed as the Indians would have understood them. This rule of construction has been utilized by this Court since its decision in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 528 (1832) (McLean, J. concurring), and has been restated in the exact same words in numerous decisions of this Court. *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 630-631 (1970); *Tulee v. Washington*, 315 U.S. 681, 684-685 (1942); *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Jones v. Meehan*, 175 U.S. 1, 10-11 (1899).

No departure from this rule of construction was made by this Court in *Washington v. Fishing Vessel Ass'n*, 443 U.S. 658, 675-676 (1979), as appellants suggest. The opinion in that case explicitly invokes this rule of construction in determining the scope of the off-reservation fishing rights secured to the tribes in Washington by their treaties with the United States. The court of appeals was clearly correct in applying this hallowed and viable rule of treaty conctruction to the treaties at issue here.

Two other well-recognized canons of Indian treaty constuction also apply to this case: (1) that doubtful expressions and ambiguities in the treaty are to be resolved in favor of the Indian parties, *Arizona v. California*, 373 U.S. 546, 599-601 (1963); *Alaska Pacific Fisheries v. United States*; 248 U.S. 78, 89 (1918); *Winters v. United States*, 207 U.S. 564, 576-577 (1908); and (2) that treaties should be construed liberally in favor of the Indians, with a view toward the practical construction adopted by the parties. *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943); *United States v. Shoshone Tribe*, *supra*.

The rationale for the development of these interpretive canons, which direct a court's inquiry well beyond the four corners of the agreement at issue, is the recognition of the

disparity between the parties:

> "In construing any treaty between the United States and an Indian tribe, it must always...be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

Jones v. Meehan, supra, at 10-11. The record in this case clearly demonstates the above considerations apply to the circumstances surrounding the treaties of 1837, 1842, and 1854.

The court of appeals utilized all the appropriate rules of construction in interpreting the provisions of the treaties at issue. The court took into consideration the history of the times, the circumstances surrounding the treaties, and the parties' practical construction of the terms, in reviewing the two matters of factual dispute raised in the appellate court: the first being the conditions under which the Chippewa would be removed from their lands ceded in the treaties of 1837 and 1842, and the second being the impact on the rights to hunt, fish, and gather reserved in those treaties by the signing of the treaty of 1854. It is on those two issues that appellants base their appeal. Rather than engage in treaty revision or rewriting, however, the court of appeals carefully applied to those issues the requisite interpretive

canons. Its conclusions concerning the rights reserved by the treaties of 1837 and 1842 and the effect of the treaty of 1854 upon them is independently supported by the standard of appellate review applicable to this case. To that matter appellees now turn.

B. The Court Of Appeals Properly Based Its Holdings In This Case Upon The Standard Of Review Applicable To Motions For Summary Judgment.

The posture of this case in the court below was cross-appeals from a grant of summary judgment in favor of the State and local officials. In such a case, the court adopted the traditional standard for appellate review of a grant of summary judgment: that summary judgment will not lie unless, construing all inferences in favor of the party against whom the motion is made, no genuine issue of material fact exists. 700 F.2d at 349; App. 16a. This standard is as applicable to cross-motions as it is to cases in which only one party is the movant. *Pharo v. Smith*, 621 F.2d 656 (5th Cir. 1980), *reh, granted in part and remanded on other grounds*, 625 F.2d 1226 (5th Cir. 1980); *United States v. Bob Chrislaw*, 341 F.2d 887 (7th Cir. 1965).

As the State and local officials were granted summary judgment by the district court, all inferences of fact concerning the intent of the parties to the Treaty of 1854 were made in favor of the Tribe. 700 F.2d at 364; App. 48a-49a. And as the district court held that the 1850 order of removal was invalid, all inferences of fact concerning that matter were made in favor of the State and local officials. The role of the appellate court in a summary judgement appeal is to review the trial court's conclusions that no genuine issue of material fact existed. The court of appeals is not required to reverse the trial court if any evidence exists which supports appellants position, but only if that evidence makes erroneous the trial court's determination that no genuine issue of material fact exists. The court of appeals properly concluded that no genuine issue of material fact existed which precluded the trial court from finding that

the removal order of 1850 was invalid. 700 F.2d at 362; App. 33a-34a.

C. The Removal Order Of 1850 Did Not Terminate The Tribe's Hunting And Fishing Rights.

1. The Order Was Not Authorized By The Earlier Treaties.

The order of President Zachary Taylor to the Chippewa in 1850 required them to remove from their lands ceded in 1837 and 1842 and to move to their unceded land in Minnesota Territory. Appellants argue that this action was clearly authorized by the 1837 and 1842 treaties themselves. Both the trial court and the court of appeals disagreed, after construing the purported grants of authority in the treaties in light of the surrounding negotiations and the express representations of the federal treaty negotiators to the Chippewa that they would not be required to remove unless they "misbehaved." *Bouchard*, 464 F. Supp. at 1349, App. 118a-119a; *Voigt*, 700 F.2d at 361, App. 42a-43a. Appellants first challenge this interpretation of the treaty clauses as requiring either misbehavior or the passage of a significant number of years as the necessary predicate to an order of removal. In doing so, appellants challenge the treaty interpretation canons of construction which were discussed in Part A of this Motion. Appellants' arguments concerning the scope of the Executive Branch's authority to order removal were made to both the district court and the court of appeals, and present no substantial matters which require plenary consideration of this question.

Appellants next challenge the rule of law employed to determine the validity of an Executive Order issued outside the scope of the authorization contained in the treaties. Executive Orders which exceed their authorization from

Congress are invalid. *Cole v. Young*, 351 U.S. 536 (1956); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Marks v. CIA*, 590 F.2d 997 (D.C. Cir. 1978); *Independent Meat Packers Ass'n v. Butz*, 526 F.2d 228 (8th Cir. 1975), *cert. denied*, 424 U.S. 966 (1976). In this case, the presumption of validity which is accorded to executive orders promulgated in supposed accordance with an act of Congress, is clearly overcome by the evidence in the record that such an order would not be issued without cause.

The holding of the Court of Appeals that the 1850 order was invalid as an unauthorized act of the Executive Branch is not in error.

Additional grounds for holding that the 1850 removal order did not effectuate a termination of the Chippewas' hunting, fishing, and gathering rights were presented to the court of appeals, but were not reached by that court in light of its holding that the removal order was invalid. They are presented here as an alternative basis for upholding the summary judgment granted to the Tribe concerning the effect of the 1850 order on the existence of the right to hunt, fish, and gather in the ceded lands. *Helvering v. Gowran*, 302 U.S. 238 (1937); 10 C. Wright & A. Miller, *Federal Practice and Procedure* § 2716, at 440 (1973).

2. The Removal Order Was Revoked By Later Executive And Congressional Action.

The implementation of the 1850 removal order was suspended on August 25, 1851, through a telegram directive from the Commissioner of Indian Affairs to the Indian Agent. The removal efforts were reported to Washington as

suspended. The following year a delegation of Chippewa leaders traveled to Washington to request that then - President Millard Fillmore explicitly terminate the removal efforts. No document signed by President Fillmore exists which explicitly contravenes the removal effort, but his promise to the Chippewa to return the annutiy payment location to LaPointe in Wisconsin was carried out. Annuity payments were made there in 1853 and 1854, as well. 700 F.2d 347-348; App. 11a-13a.

The removal policy was formally abandoned by the negotiation with the Lake Superior Chippewa of a new treaty in 1854, which established permanent homes for the Chippewa in Wisconsin. Art. 2, 10 Stat. 1109, App. 163a.

As the sequence of events makes clear, the removal order of 1850 had no effect on the Chippewa's usufructuary rights. It was suspended in little more than a year by the succeeding administration, and had no further operative effect. The idea of removal was completely abandoned in the Treaty of 1854, which included therein a prohibition against any further removal efforts by any future President. Art. 11, 10 Stat. 1109, App. 167a-168a.

The only other court which has directly considered the effect of the 1850 removal order on the usufructuary rights of the Chippewa reserved in earlier treaties is the Wisconsin Supreme Court. In *State of Wisconsin v. Gurnoe*, 53 Wis. 2d 390; 192 N.W.2d 892 (1972), that court rejected the State of Wisconsin's argument that the 1850 removal order abrogated the right to fish in the Wisconsin waters of Lake Superior. The court reasoned that the removal order was never implemented, and was therefore ineffective to terminate any usufructuary rights. The court further noted that the removal order was impliedly revoked through the Treaty of 1854. 53 Wis. 2d at 406-407.

3. The Removal Order Did Not Apply To The Tribe's Rights Under the Treaty Of 1837.

The language of the removal order does not apply to the area ceded pursuant to the 1837 treaty by the Lake Superior Chippewa. The order explicitly omits any reference to the usufructuary rights in the 1837 cession area held by the Chippewa of Lake Superior, of which the Tribe is a part:

> The privileges granted temporarily to the *Chippewa Indians of the Mississippi,* by ... the treaty ... of July 1837 .. and the rights granted to the *Chippewa Indians of the Mississippi and Lake Superior* by ... the treaty .. of October 4th, 1842 ... are hereby revoked ... (emphasis added)

Bouchard, 464 F. Supp. at 1326-1327; App. 67a.

Executive orders are subject to the same rules of construction as are applied to statutes dealing with Indian affairs, i.e., that they are to be liberally construed in favor of the Indians. *Bryan v. Itasca County,* 426 U.S. 373, 392 (1976); *Northern Cheyenne Tribe v. Hollowbreast,* 425 U.S. 649, 655 n.7 (1976); *Alaska Pacific Fisheries v. United States, supra*. The omission of the usufructuary rights of the Lake Superior Chippewa in the area ceded by them in 1837 is an ambiguity which must be resolved in favor of the Indians. The general rule of construction, *expressio unius est exclusio alterius*, as applied to the executive order here, requires that the order be construed as having no effect on the Tribe's right to hunt, fish, and gather in the 1837 cession area.

4. Mole Lake Band v. United States Has No Res Judicata Or Collateral Estoppel Effect On This Case.

Appellants' claim of error by the court of appeals in declining to accord *res judicata* effect to the Court of Claims decision in *Mole Lake Band v. United States,* 139 F.Supp. 938 (Ct. Cl. 1956), *cert. denied,* 352 U.S. 892 (1956) is without merit. As the court of appeals pointed out, the State of Wisconsin was not formally a party to those proceedings, which is a fundamental prerequisite to application of the doctrine to any subsequent case involving the Tribe. *Parklane Hosiery Co. v. Shore,* 439 U.S. 322 (1979). Equally a fundamental prerequisite is the identical nature of the issues in both cases. The court of appeals correctly noted that the issues presented to the Court of Claims in *Mole Lake Band* did not include the validity or effect of the removal order and its effect on the 1837 and 1842 treaty usufructuary rights, and that the court's discussion on the effect of the order was in the context of the recitation of the historical events. That court was presented with the question of title to swamp lands included within the reservations established by the 1854 treaty. The court of appeals properly declined therefore to accord res judicata effect to the *Mole Lake Band* decision.

Due to the compete disparity in the issues presented in *Mole Lake Band* and in this case, the doctrine of collateral estoppel is equally inapplicable. *Parklane Hosiery Co. v. Shore, supra,* at 326 n.5.

D. The Court Of Appeals Correctly Held That The 1854 Treaty Did Not Release Or Extinguish The Usufructuary Rights.

The rule of law that treaty-reserved usufructuary rights cannot be abrogated by implication. *Menominee Tribe v.*

United States; 391 U.S. 404 (1968) has always been followed by this Court. Later actions of Congress which could be construed to have limited or abrogated a treaty reserved right have been consistently held not to have such an effect without clear and express evidence that such a result was intended. *See, United States v. Michigan,* 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd in relevant part;* 653 F.2d 277 (6th Cir. 1981), *cert. denied,* 454 U.S. 1124 (1981); *United States v. White,* 508 F.2d 453, 456 (8th Cir. 1974); *Kimball v. Callahan,* 493 F.2d 564 (9th Cir. 1974), *cert. denied,* 419 U.S. 1019 (1974); *Confederated Tribes v. Alexander,* 440 F.Supp. 553 (D. Or. 1977); *People v. LeBlanc,* 399 Mich. 31; 248 N.W. 2d 199 (1976). There exists no clear and express evidence that the treaty of 1854 was intended by the parties to effect a relinquishment of the usufructuary rights reserved in earlier treaties. The court below properly declined to imply such an intent.

Appellants' claim of error by the court below in finding no relinquishment by the Chippewa of their treaty-reserved usufructuary rights though operation of the 1854 treaty is based upon several erroneous assumptions. The first assumption is that there exists a body of caselaw which holds that treaty-reserved, as distinguished from aboriginal usufructuary rights can be extinguished without express language to that effect in a subsequent act of Congress. *See, e.g., Lower Brule Sioux Tribe v. South Dakota,* F.2d , Case No. 82-1635 (8th Cir. June 27, 1983), and cases discussed therein.

The second assumption made by appellants is that use of the land is,and must be, tied directly with the right to occupy the land. Reservations in treaties are not limited to real estate, but can be of any aspect of aboriginal or recognized title; tribes often reserved hunting and fishing rights in areas outside their reservation boundaries. *See, e.g., Washington v. Fishing Vessel Ass'n, supra, Antoine v. Washington,* 420 U.S. 194 (1975); *United States v. Winans,* 198 U.S. 371 (1905); *Sohappy v. Smith,* 302 F. Supp. 899 (D. Or 1969); *People v. Jondreau,* 348 Mich 539, 185 N.W. 2d 375 (1971). *Accord, Lower Brule Sioux Tribe v. South*

Dakota, supra, at 24-25. This division between the right to occupy and the right to use land is well recognized in treaty cases; the treaty-reserved usufructuary rights reserved in lands not owned, or later ceded, by Indian tribes has been characterized as a form of tribal communal property comparable to a profit a prendre. *United States v. Washington,* 520 F. 2d 676 (9th Cir. 1975), *cert. denied,* 423 U.S. 1086 (1976); *Van Camp v. Menominee Enterprises,* 68 Wis. 2d 332, 228 N.W. 2d 664 (1975).

The third assumption of appellants' claim of error is the unfounded distinction between usufructuary rights which have no implied limitation as to duration, and usufructuary rights which could be terminated upon the satisfaction of the stated condition. There is no support in the case law for such a distinction, when the issue is whether or not such rights can be extinguished by implication. Conditional treaty usufructuary rights are not unique to the Treaties of 1837 and 1842; the treaties with the Ottawa and Chippewa of Michigan also contained limiting language. The reservation of the usufructuary rights "until the land is required for settlement", Art. 13, Treaty of March 28, 1836, 7 Stat. 491, was not considered by the courts ascertaining its meaning to authorize relinquishment by implication in the 1855 Treaty with the Indians. *United States v. Michigan, supra; People v. LeBlanc, supra.*

There exists no disparity between existing caselaw concerning treaty interpretation and abrogation and the result reached by the court below in this case.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

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